IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 800

MERCURY PRESS, INC., *Petitioner,*

v.

DISTRICT OF COLUMBIA, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF IN OPPOSITION

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OPINIONS BELOW

The opinions of the Board of Tax Appeals for the District of Columbia (R. 5-7) and the United States Court of Appeals for the District of Columbia Circuit (R. 21-23) are not yet reported.

GROUNDS OF JURISDICTION

Petitioner has not stated the grounds on which the jurisdiction of this Court is invoked (Rule 27(c)).

SPECIFICATION OF ERRORS

Petitioner has not made a specification of errors (Rule 27 (e)).

SUMMARY OF ARGUMENT

Petitioner has not stated the grounds on which the jurisdiction of this Court is invoked nor made a specification of errors. Petitioner has not complied with Rules 27 and 38 of this Honorable Court which is sufficient reason for denying the petition.

The question presented is not one of general importance. In substance, the question presented is whether the Congress of the United States has power to and has imposed a tax upon certain tangible personal property in the District of Columbia. The Court of Appeals pointed out (R. 23) that clearly the Congress had power to impose the tax in dispute, and it did so.

The Federal Congress, in the exercise of its plenary power to legislate for the District of Columbia in all cases whatsoever, is not restricted by any of the constitutional limitations applicable to the several States.

Cases relied upon by petitioner in support of its contention that Congress did not have power to impose the tax here involved are not applicable. The argument of petitioner that the tax in this case was imposed upon imports and, under Article I, Sec. 8, Cl. 1, of the Constitution, the proceeds of such tax are required to be used to pay the debts and provide for the common defense and general welfare of the United States is unsound. The tax involved was imposed upon tangible personal property used in petitioner's business in the District of Columbia (R. 3, Finding 1).

ARGUMENT

I

Reasons Why the Writ Should be Denied.

Petitioner has not complied with Rules 27 and 38 of this Honorable Court which is sufficient reason for denying the

petition. *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U. S. 175, 178.

The statute here involved is confined in its application solely to tangible personal property in the District of Columbia imported from Canada, and, therefore, the question presented is not one of general importance. *Layne & Bowler Corp.* v. *Western Well Works*, 261 U. S. 387, 393.

The question presented is, in substance, whether the Congress of the United States has imposed a tax upon the tangible personal property involved. It is respectfully submitted that this question does not present any of the special and important reasons why this Honorable Court should review the decision of the United States Court of Appeals in this case. The constitutional limitations upon the powers of the respective States, and upon the Congress of the United States with rspect to the uniformity of duties, imposts and excises imposed under Article I of Sec. 8, Cl. 1 of the Constitution are not involved.

II

In Legislating for the District of Columbia, Congress possesses full and Unlimited Power to Select any Property, Including that in Interstate Commerce and that Imported, for Taxation.

The statute involved in this case was enacted by the Federal Congress in the exercise, under Article I, Sec. 8, Cl. 17 of the Constitution, of its plenary power to legislate for the District of Columbia *in all cases whatsoever*. In so legislating, Congress acts as a legislature of national character, unrestricted by any of the Constitutional limitations applicable to the several States. *Neild et al.* v. *District of Columbia*, 71 App. D. C. 306, 110 F. 2d 246.

Petitioner states that the question presented is:

> "Are imports taxable in the District of Columbia under a statute which provides for a tax on 'all tangible personal property'?"

After carefully considering the various contentions of petitioner which included references to many decisions of this Court and of the United States Court of Appeals, Mr. Justice Prettyman, speaking for the Court of Appeals, clearly expressed what, we submit, is unquestionably the law (R. 22, 23):

> "* * * There is no constitutional prohibition upon the Federal Government in respect to the taxation of imports. Under that view of the local legislative functions, therefore, there was ample power for the tax in the case at bar."[1]
>
> * * *
>
> "Thus we think that Congress had constitutional power to impose the tax here disputed. It seems equally clear that it did so. The tax applies, in the language of the statute, to 'all tangible personal property', with exceptions and exemptions which do not include imports."

Petitioner contends, in stating its reasons relied upon for the allowance of the writ of certiorari, that the decision below is in direct conflict with three cases decided by this Court as to the powers of Congress. The case of *Hooven & Allison Co.* v. *Evatt*, 324 U. S. 652, rehearing denied 325 U. S. 892, involved, *inter alia*, the power of the State of Ohio to tax imported property. Far from supporting petitioner's attack on the statute involved, the *Hooven & Allison* Co. case is recognition of the fact that the purpose of Article I, Sec. 10, Cl. 2 of the Constitution "is to protect the exclusive power of the national government to tax imports" (324 U. S. 664). In this case, of course, that power of the

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[1] The statement that "There is no constitutional prohibition upon the Federal Government in respect to the taxation of imports" is true even where the proceeds of a tax such as this are used for local purposes rather than purposes of the Federal Government. See *Binns* v. *United States*, 194 U. S. 487.

national government has not been affected, and it was the Congress of the United States which enacted the tax statute involved.

The case of *Atlantic Cleaners & Dyers* v. *United States*, 286 U. S. 427, was a suit brought by the United States against appellants to enjoin them from continuing in the District of Columbia an alleged conspiracy in restraint of trade and commerce contrary to the Sherman Anti-Trust Act. Insofar as that case expresses the power of Congress over the affairs of the District of Columbia it is against the contentions of petitioner. This Honorable Court said in that case, referring to the plenary power of Congress to legislate for the Disstrict of Columbia (286 U. S. 434):

> "* * * Under that clause, Congress possesses not only every appropriate national power, but, in addition, all the powers of legislation which may be exercised by a state in dealing with its affairs, so long as other provisions of the Constitution are not infringed. * * *"

The remaining case of *Loughborough* v. *Blake*, 5 Wheat. 317, involved the question whether Congress has a right to impose a direct tax on the District of Columbia. This Court concluded that the Congress had such power. The contention of petitioner in the present case with respect to the point decided in the *Loughborough* case is, as was the situation in the later case of *Gibbons* v. *District of Columbia*, 116 U. S. 404, founded on a misunderstanding of the *Loughborough* case. This Court said in the *Gibbons* case (116 U. S. 407), referring to the *Loughborough* case:

> "The point there decided was that an Act of Congress, laying a direct tax throughout the United States in proportion to the census directed to be taken by the Constitution, might comprehend the District of Columbia; and the power of Congress, legislating as a local Legislature for the District,

> to levy taxes for district purposes only, in like manner as the Legislature of a State may tax the people of a State for state purposes, was expressly admitted, and has never since been doubted. * * *"

The error of petitioner in this respect results from its persistence with the argument that the tax here involved is "a tax on an import" (Pet. Brief, p. 8). The tax clearly is a direct tax upon "tangible personal property".

Petitioner cites *Downes* v. *Bidwell*, 182 U. S. 244. That case was an action to recover duties upon certain oranges consigned to plaintiff at New York and brought there from Puerto Rico. One of the questions was whether Puerto Rico was a foreign country, or a part of the United States. This Court concluded that Puerto Rico was a territory "appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution"; that the statute there involved was constitutional, and that the plaintiff could not recover the import duties exacted.

None of the remaining cases cited by petitioner are applicable to the question presented.

Petitioner refers to comments made by two Senators on May 12 and May 13, 1949, during debate of the proposed District of Columbia Sales Tax Act (H.R. 3704, 81st Congress) as indicative of some misunderstanding on the part of those Senators with respect to the power of Congress in legislating for the District of Columbia. There is no such misunderstanding. The record discloses (95 Cong. Rec. 6283), for example, that Senator Hunt, whose remarks are partially quoted on page 3 of the petition filed herein, was answering a question propounded by Senator O'Conor with repect to exemptions covered under Sec. (m), page 13, of the bill (H.R. 3704). That section exempts from the sales tax: "(m), Sales which a State would be without power to tax under the limitations of the Constitution of the United States." An identical exemption was con-

tained in Sec. 3(r) of Title I of the proposed District of Columbia Sales and Compensating Use Tax Act of 1948 (S. 843, 80th Congress) and Senate Committee Report No. 1467, dated June 3, 1948, 80th Congress, 2d Sess., stated the following with respect thereto (p. 2):

> "The bill also exempts from the tax sales which the States would be without power to tax under the limitations of the Federal Constitution. The commerce clause of the Federal Constitution is not a limitation on the power of the Congress in legislating in its national capacity for the District of Columbia. For this reason, the committee believes that it is advisable to provide for the exemption of sales which the States could not tax because of the exclusive constitutional power conferred upon the Congress to regulate commerce among the States. By so providing this exemption, the sales tax law for the District will have no broader application than, and would be to that extent in uniformity with, sales tax laws enacted by some of the States."

III

The Requirement of Article I, Sec. 10, cl. 2 of the Constitution that proceeds of a tax on imports must be "for the use of the Treasury of the United States" is a restriction upon the power of States and not upon the power of Congress.

Petitioner argues further that the tax in this case was imposed upon "imports", and that under Article I, Sec. 8 of the Federal Constitution the proceeds of such tax are required to be used "to pay the debts and provide for the common defense and general welfare of the United States" (Pet. brief, p. 6), and that here that requirement is not met as the proceeds "go solely to the payment of District of Columbia obligations." This argument is manifestly unsound.

Like the commerce clause, Clause 2 of Article I, Sec. 10 of the Constitution is a limitation upon the power of the

several States and constitutes no restriction on the power of the Federal Congress in legislating for the District. So also is the further limitation in said Clause 2, requiring the consent of the Federal Congress for a State to tax imports or exports and providing that the proceeds from all duties and imposts laid by any State shall be for the use of the Treasury of the United States, a limitation upon the power of the States and not that of Congress.

Moreover, even if the foregoing requirement had any application to local tax statutes enacted for the District by Congress, the requirement has been met. As the court below so aptly pointed out (R. 23),

> "* * * That the proceeds of all local taxes go into the Treasury of the United States, albeit credited to special accounts therein, is one of the best known and most debated features of the local government. So, if that requirement pertains to the tax in the case at bar, it has been met."

CONCLUSION

For the reasons hereinbefore stated, it is respectfully submitted that the petition for writ of certiorari should be denied.

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